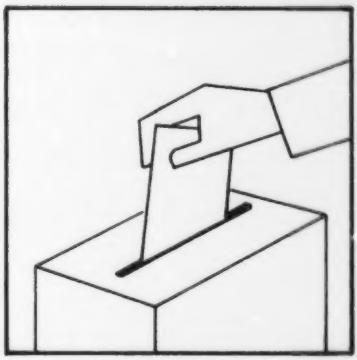
SCHOOL TRUSTEE ELECTION PROCEDURES IN B.C.

A GUIDE FOR SCHOOL BOARDS, ADMINISTRATORS AND OFFICIALS



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PREFACE

School trustee elections follow a complicated procedure. Moreover, they take place only once a year — in some locations once every two years.

The need for a ready-reference booklet is clear. Many questions are raised with the Ministry of Education, particularly during the weeks immediately preceding trustee elections.

This booklet will help answer those questions. It was compiled by John Walsh and Alan Nicholls as a non-legal overview of the election process, and indicates the appropriate sections of statutes.

Readers' comments and suggestions will be appreciated.

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CHAPTER 1: INTRODUCTION

Booklet's Purpose

This booklet contains an interpretation of school trustee election procedures in British Columbia for the non-lawyer. Its objective is to bring together and make readily comprehensible the complex legislation on the subject contained in the *School Act* and the *Municipal Act*. It is written to be of value to:

- school boards and their executive officers;
- returning officers, deputy returning officers and poll clerks;
- aspiring trustees, their nominators and agents;
- Ministry of Education and B.C. School Trustees Association officials; and
- school district taxpayers and voters.

Content Organization

The booklet provides an overview of the relevant legislation and case law, it contains the minimum of "legalese" and is organized into chapters that follow the sequential stages of trustee elections:

types of trustee elections
frequency of elections
responsibility for holding elections
the organization of elections
role of the returning officer
eligibility for nomination and election
nomination procedures
voter eligibility
voting and counting procedures
calling for a recount
appeals against validity of an election
taking office as trustee

Each review of the above operational stages includes references to the relevant statute sections and court decisions, so the reader may examine their exact wording where desired.

Advice To The Reader

Despite every effort to make the subject matter brief, clear and interesting, this booklet is best utilized by studying only a few pages at a time — or by reading only those chapters that are of direct interest. For example, Chapter 6, Role of the Returning Officer, is one of the longest in the book and is unlikely to be of interest to anyone other than a potential or serving R.O. Another lengthy chapter, Chapter 2, includes an historical background on school trustee elections in British Columbia that may be of limited interest to some. Each chapter is a self contained package, and in the few places where reference to some other part of the booklet for additional information is required this is clearly mentioned in the text.

Use As Reference

Above all, this booklet should be useful as a quick reference. In addition to the table of contents and paragraph headings on every page, there is a comprehensive, functional index.

Source Material

The basic sources for the booklet were of course the B.C. *School Act* and *Municipal Act*. Additional material was obtained from:

"A Guide to the School Act of B.C." — B.C. School Trustees Association, Vancouver, 3rd edition, 1984.

"The Legal Status of the Canadian School Board" — Dr. Frederick Enns, MacMillan, Toronto, 1963.

"A History of Public Education in B.C." — F. Henry Johnson, Publications Centre, U.B.C., Vancouver, 1964.

"John Jessop: gold seeker and educator" — F. Henry Johnson, Mitchell Press, Vancouver, 1971.

"100 Years of Education in B.C.." Department of Education, 1972.

Further Information

Sources of further general information on trustee election procedures are:

Ministry of Education — Legislative and Information Services.

B.C. School Trustees Association — Research Services.

Should there be a specific problem, however, it would also be advisable to consult a lawyer who is knowledgeable on this subject.

WARNING This booklet is not intended as a legal reference, but as an overview for the guidance of the non-lawyer. The law is contained in the statutes and court decisions. When a specific problem arises CONSULT A LAWYER.

CHAPTER 2. TYPES OF ELECTIONS

The Historical Background To Current Election Methods

Rationale for Local Elected Bodies

The local administration of public schools by elected bodies has long been the practice in western — world countries. It is generally believed to ensure that within common basics the schools reflect community needs and standards, thus improving the quality of educational services and strengthening public support. A closely associated belief is that local educational authority must be joined with fiscal responsibility — the locally elected bodies must be accountable to the voters not only for discretionary expenditures but also for the level of local taxes.

Municipal or School Board Function

Historically, this local administration of public schools has been carried out either through general municipal governments or ad hoc boards of education. The European countries tend to favour the former — for example, England has had for many years "local education authorities" that are sub-committees of local municipal councils with parent and educator representatives. The North American preference has been to elect local school boards directly. In Canada the United Empire Loyalists brought the institution of elected school boards with them from its birthplace, the American Colonies.

School Boards in Early Canada

Elected school boards operated in pre-Confederation Upper and Lower Canada, and they were favoured by Egerton Ryerson who drafted Ontario's (and Canada's) first public school legislation in 1846. That legislation subsequently influenced the legislation in other Provinces, including British Columbia — see below.

Early Schools in B.C.

School Boards Promoted by de Cosmos

John Jessop's Proposals

School Act of 1872

The first public schools in this Province, however did not have school boards. In 1852 schools were established for "the children of the labouring and poorer classes" in Victoria, Craigflower and Nanaimo. They were administered directly by the colonial authorities, but with increasing population public dissatisfaction grew with this autocratic system of control. In 1862 Amor de Cosmos (later to become B.C.'s second Premier) promoted in his newspaper "The Colonist" the idea of a free non-sectarian school system with "locally elected school trustees following Canadian practice." This concept was further developed by a recent arrival in B.C., John Jessop, who had travelled overland from Ontario. Jessop was a graduate of Egerton Ryerson's teacher training college, and in 1872 he was to become B.C.'s first Superintendent of Education. His detailed proposals for a public school system, modelled on the Ontario system, were first the basis of the Common School Ordinances of 1865 and 1869, and finally in 1872 the first *Public School Act* in B.C. Its section 9 provided for three trustees to be elected in each of the 25 school

districts for three year terms. The elections took place at meetings of the electors. The next 15 sections of the 1872 Act, which had 38 sections only in total, governed the procedures to be followed in those elections — then, as now, the complexities of trustee elections made a substantial contribution to the B.C. *School Act's* contents.

Problems with School Board Elections

Nevertheless, even with the 1872 Act's detailed legislative provisions, the functioning of school board elections in B.C. has not always been untroubled. Problems have arisen over the years from citizen indifference, from the formation of a multiplicity of small, school districts, and from strained relations with municipal councils over local funding. These all threatened in turn the continued, widespread existence of elected boards in the Province.

Local School Taxes Introduced

As early as 1874 the Province's first Superintendent of Schools, John Jessop, complained of the trustees "deplorable want of interest" in their schools, and in 1876 a school poll tax was introduced in part to help stimulate trustee and citizen interest in school board affairs. Then, in 1884, to heighten interest further, the Provincial Government took the unprecedented step of permitting the wives of residents to vote at the school meetings — the franchise was not extended to women at provincial elections until 1917, and at federal elections until 1918.

Women to Vote in Trustee Elections

Provincial Controls Relaxed

Also during the late 1800s, provincial controls over public school operations were relaxed as more of the funding was provided locally. By 1893 more than 50% of public school financing came from local sources, and citizen interest in school board affairs had heightened considerably.

Number of School Boards Increase

During the early 1900s many rural school districts were established throughout the Province, as it became more settled. In 1901 there were 257 school districts in B.C., and by 1931 the number had grown to 830. One of the major reasons for these high numbers was that the rudimentary state of communications and transportation created difficulties for anything other than localized elections and control of the schools. An unfortunate corollary of the multiplicity of districts was that insufficient eligible persons were available to serve as school trustees. In 1919 the Provincial Government had to appoint official trustees in certain rural school districts, as it became "increasingly difficult to find local residents with the education, time and interest for school board duties." This problem continued for the next few decades, and was compounded by requirements that municipal councils approve the school boards' tax requisitions, and if agreement between a board and council could not be achieved the dispute was referred to arbitration. This made the school trustees subordinate to municipal councillors in many eyes, and further reduced the supply of aspiring trustees.

Official Trustees Required

Consolidation Experiments

During the 1920s and 30s some consolidations of school districts took place, particularly in the Peace River and Okanagan areas, aided by improvements in motor vehicles and the road system. Such amalgamations were favoured by the Putman-Weir Report in 1925 and the King Report in 1935, but it was not until 1944 that effective, province-wide action was taken. In that year there were still 650 school districts in B.C., administered by 437 elected school boards and 213 official trustees. These were reorganized into 74 school districts, as recommended in the Cameron Report, large enough to provide effective and efficient education and also "large enough and powerful enough that their work will be a challenge to the trustees who control them." With some relatively minor variations in numbers and boundaries these districts continue to exist today.

Major Reorganization of Districts in 1944

Election Methods in B.C.

Current Election Procedures

As described earlier, the first school trustee elections in B.C. took place at meetings of the electors. Today the *School Act* continues to provide for trustees to be elected by this method, and at meetings of representatives who are appointed for this purpose at meetings of the electors (sections 34 (2) (3) and 36-50, *School Act*). In practice, very few trustees are now elected in this manner — 2 serving trustees in 1985. The vast majority of trustee elections are by ballot, either at large throughout the school district or within specified areas of the district (sections 25-35, *School Act*, and most of Part 3, *Municipal Act*). In the City of Vancouver the elections are by balloting at large in accordance with the *Vancouver Charter* (section 35 (f), *School Act*).

Failure to Hold Elections

Should any trustee elections not be held as required, or if the electors fail to elect the number of trustees or representatives called for under the *School Act*, the Minister of Education may appoint the trustees or representatives required (section 27 (2), *School Act*). Should a required meeting of electors not be held at the proper time, the Minister of Education may arrange for them to hold a special meeting to conduct the needed business (section 73, *School Act*).

But before examining all of the election and appointment procedures in detail, it is advisable to study first the procedures followed for new or newly amalgamated school districts.

First Members of the Board

Creation of School Districts

The Lieutenant Governor in Council (in practice the Provincial Cabinet) has the power to create new school districts and to set their boundaries, to abolish or alter the boundaries of existing districts, and to decide what method of election shall be used in each school district — balloting or at meetings of electors or representatives (section 13, *School Act*). If a new school district is

created by amalgamation or division of existing school districts, the Lieutenant Governor in Council may terminate the terms of office of the existing trustees (section 78, *School Act*). It is the Minister of Education's responsibility to decide the composition and make the arrangements for the first board of school trustees, for each school district must have such a board (section 22 (1), *School Act*).

Composition of the First Board

The Minister's first task is to decide the number of trustees in the school district: 3, 5, 7 or 9 (section 22 (2), *School Act*) although there are currently no three person boards in the Province. He must then decide how many trustees shall represent each municipality and rural area in a school district, unless elections are to be held at large, and set the trustees' terms of office (section 22 (3), *School Act*).

Finally the Minister must decide whether the first board members shall be appointed by him, or be elected at elections held as he determines, for terms ending when the school district's first annual election takes place (section 23, *School Act*).

First Annual Election

At the first annual election in the new school district a bare majority of the trustees (5 out of 9, 4 out of 7, 3 out of 5) are elected for two years, and the others for one year (section 24 (1), *School Act*). This enables the district to conduct annual elections in future years with all trustees elected for two-year terms — the frequency of elections is the subject of Chapter III.

Elections at Meetings

All subsequent chapters concern procedures for the elections by balloting method only, except those detailing eligibility and the taking of office. This section briefly covers the election at meetings method, in order to "clear the decks" of this anachronism developed at a time when poor communications in B.C. precluded other systems.

Where Balloting Not Practicable

Trustee elections may be held at annual meetings of electors, or at meetings of representatives, where the Minister of Education determines, on the request of the board, that balloting at large is not practicable; this may be for a rural school district, or in a rural area forming part of the district only (section 34 (2) (3), *School Act*).

Meetings' Organization and Procedures

The organization of annual meetings of electors to elect trustees, and the necessary procedures, are contained in sections 36-39 of the *School Act*. For the meetings of electors to elect representatives, and for meetings of those representatives, see sections 40-50. Also, section 54 requires that copies of the minutes of all meetings of electors shall be "promptly transmitted" to the Ministry of Education, while section 73 permits the Minister to call special meetings of the electors if no proper meeting has been held.

CHAPTER 3. FREQUENCY OF ELECTIONS

How Often Should Trustee Elections Be Held?

Annual Elections Required

Every year, following its first annual election, each school district must elect enough trustees to fill the seats that become vacant, being approximately half of the board. This requirement is based on sections 24 and 25 of the *School Act*: 24 (4) provides that all trustees are elected for two years, following the first annual election, while 25 states that there shall be annual elections in all school districts. Once the alternating year pattern of trustees' terms of office has been established by the district's first annual election, sections 24 (4) and 25 ensure that the pattern becomes self perpetuating.

Three Exceptions

Nevertheless, there are in the *School Act* three provisions for exceptions to section 25's requirement that there be annual elections: where biennial elections are approved by the Minister of Education, in the City of Vancouver, and in a school district with an official trustee.

Biennial Elections

Section 26, *School Act*, provides for the biennial election of trustees — all seats on the board must be filled at the same time every two years. The section specifies that where a school district contains a municipality that has biennial elections for its council, the school board may apply to the Minister of Education for permission to hold the trustee elections on the same biennial basis. These biennial trustee elections may be for those within the municipality only, or for all trustee elections throughout the school district. When the Minister's permission is given, the school board must then pass an enabling by-law that provides for the transition to biennial elections (section 26 (2), *School Act*). For example, this may be done by electing the required number of trustees at the next (and last) annual election for one year terms only.

Proposals for Triennial Elections

It is interesting to note that proposals for triennial elections of municipal councils and of school boards have been recently endorsed by the Union of B.C. Municipalities and by the Select Standing Committee of the B.C. Legislature on Municipal Affairs and Housing — its report appears in Votes and Proceedings for February 7, 1984. The rationale for triennial elections includes cost savings, heightened voter interest, and extended opportunities for those elected to develop their knowledge and expertise — thus making for a more democratic system.

Vancouver School District

The election of school trustees in the Vancouver school district, which shares the same boundaries as the City of Vancouver, is governed by the provincial statute that replaces the *Municipal Act* within that City — the *Vancouver Charter* (section 34 (f) of the *School Act*). *School Act* section 64 (2) provides that the eligible voters in trustee elections shall be those who qualify

under the *Vancouver Charter*. The outcome is that school board elections in Vancouver are held biennially, at the same time and places as the City council and the parks board elections. All 9 seats on the school board are required to be filled for 2 year terms at these elections.

Official Trustees

An official trustee may be appointed in a school district "during pleasure" of the Lieutenant Governor in Council (section 15 (i), *School Act*). Upon such an appointment all the serving trustees in the district cease to hold office (section 79, *School Act*), and the official trustee takes over the powers and duties of the school board (section 15 (i), *School Act*).

CHAPTER 4. RESPONSIBILITY FOR ELECTIONS

Who is Responsible for Conducting Trustee Elections?

Election Duties

In order for trustee elections to take place someone must announce to the voters the date of the election, and also the times and places for nominations and balloting. It is also necessary that someone prepares the voters' list, makes all physical arrangements, appoints a returning officer and pays the bills.

Responsibilities for Annual or Biennial Elections

Section 27 (1) of the *School Act* specifies who is responsible for conducting annual or biennial trustee elections (the responsibility for other elections is dealt with later in this chapter). The section provides, in effect, that the school board is responsible except where the trustee elections are held at the same time, in the same manner, and for the same area as an election for municipal councillors — in which case the municipality is responsible. In more detail, section 27 (1) provides that the responsibility lies with:

(a) the municipal council, for trustee elections within a municipality that forms all of a school district, or forms part of a school district *and* a trustee(s) is elected to represent the municipality.

(b) the school board, for elections within a wholly rural school district, or where a trustee(s) is elected to represent a rural area within the school district; and

(c) the school board, for elections in a school district which contains one or more municipalities and a rural area(s) *and* the trustees are elected at large throughout the district.

It is possible, however, under section 31 (1) of the *School Act*, for the Minister of Education to require a municipality to include in its trustee elections a rural area which the Minister believes is not adequately represented otherwise. This action by the Minister must be requested by the school board, which also must pay the municipality for the election expenses incurred in the rural area (section 29 (b), *School Act*), and provide the municipality with the voters' list for the rural area (section 31 (3), *School Act*). In practice there is usually mutual agreement between the board and municipality before the Minister issues the necessary order.

Co-ordination of Municipal and Trustee Elections

The trustee elections that are the responsibility of a municipality are required to be held at the same time and in the same manner as the municipal council elections, and to employ the same returning officer (section 30, *School Act*). In this case all costs are borne by the municipality (section 29 (a), *School Act*).

Failure to Hold Election

Should any annual or biennial trustee election not be held as required, or if the required number of trustees is not elected, then the Minister of Education may appoint those trustees necessary to make up the board (section 27 (2), *School Act*).

Responsibilities for Other Trustee Elections

In addition to annual or biennial elections, the *School Act* provides for three other types of trustee elections:

(a) to form the first board of a new school district — see Chapter 2, page 6;

(b) to fill vacancies on a board of trustees — see below; and

(c) to replace an official trustee — see below.

By-elections To Fill Vacancies

The responsibility to hold by-elections to fill a vacancy on a board of school trustees that occurs between annual or biennial elections — for example, if a trustee dies or resigns from office — rests with the same body as for the annual or biennial elections (sections 33 and 52, *School Act*). Nevertheless, if the vacancy occurs within a municipality, it is the school board's responsibility to advise the municipal council of the vacancy within 30 days of it occurring, and to re-imburse the municipality for the costs of the by-election (section 29 (a), *School Act*).

By-election Not Needed

It is provided in sections 33 and 52, however, that in certain circumstances a by-election need not be held:

(a) if the municipal council or school board does not hold the required election within the specified periods (30 days from being advised of the vacancy for the municipal council, and 60 days from the vacancy occurring for the school board) — in which case the school board may appoint a qualified, replacement trustee, with the Minister of Education's approval; or

(b) if it is the only vacancy on the school board, and it occurs after July 1 in the last year of the trustee's term — in which case the vacancy may be left open until the next annual or biennial election.

Replacing Official Trustee

As the appointment of an official trustee is during the Cabinet's "pleasure" (see Chapter 3, page 8), the Cabinet may order at any time the holding of an election for a school board to replace the official trustee. The regulation providing for such an election may specify who is responsible for holding the election, and the arrangements for paying its costs, under the general authority of section 81, *School Act*.

CHAPTER 5. HOW TO CONDUCT ELECTIONS

What Needs To Be Done By The School Board?

Duties of School Board

The previous chapter explains under what circumstances a school board is responsible for the conduct of trustee elections. Where a board has this responsibility, its duties concern:

- preparation of voters' lists;
- selection of nomination and polling places, and the provision of ballot boxes and ballot papers;
- appointment of a returning officer; and
- making any other arrangements for the election.

Preparing Voters' Lists — In Rural Areas

The board secretary of the regional district in which a *rural* area of a school district is located is responsible for preparing lists of electors (section 65, *School Act*), and a copy of the list for the school district must be provided to the secretary-treasurer (section 781 (5) (6), *Municipal Act*). It is the school board's duty to have its secretary-treasurer prepare extracts from this list for the parts of the school district in which elections are held (section 35 (a), *School Act*). Should the *rural* part of a school district not be in a regional district, the secretary-treasurer prepares the list of electors for that part (section 67, *School Act*).

Whether the list of electors is prepared by the regional district secretary or the school district secretary-treasurer, the procedures followed are the same as for a municipality (see below), but with some variations contained in section 781, *Municipal Act*.

Should there be changes to the boundaries of a *rural* school district or *rural* part of a district, the necessary corrections to the voters' lists are made by the secretary-treasurer, and certified correct by the school board chairman (sections 69 and 70, *School Act*).

Preparing Voters' Lists — In Municipalities

Voters' lists in *municipal* school districts or parts of school districts are the same as those prepared by the municipal council in accordance with the *Municipal Act* or *Vancouver Charter* (section 64, *School Act*). The clerk of the municipality maintains the register of electors (section 41, *Municipal Act*), and prepares annually a list of electors that is "closed" at 5 p.m. on August 31 (section 55, *Municipal Act*). Any qualified elector omitted from the list, however, may vote in November — see Chapter 9.

Nomination and Polling Places

The school board is required by section 35 (b) (i) (ii) to set the time and places at which nominations and polling will be held, should polling be required. In addition, sections 88 and 91 of the *Municipal Act* authorise the school board to provide for an advance poll and a mobile poll respectively.

Notice of Election

The returning officer, under the provisions of section 92, *Municipal Act*, issues the notice of election. It contains times and places for nominations and polling, including any advance poll. This notice must be issued at least 6 days before nomination day, in the form specified in section 92, *Municipal Act*, and published once in a newspaper circulating in the school district, and posted at the school board office, the court house and police office, if any, and at any other places as directed by the school board (section 92 (4), *Municipal Act*).

Notice of Poll

Should more qualified persons be nominated than there are vacancies on the board, so that a poll is required, the returning officer then issues a notice of poll in the form required by section 104, *Municipal Act*, confirming the time and places for polling, and listing the candidates. This notice of poll must be posted in all places where the notice of election was posted, and the returning officer may have it published in the newspaper in which the notice of election appeared (section 103, *Municipal Act*).

Timing of Nomination and Polling

Section 35 (d), *School Act* requires that for annual and biennial elections of school trustees, the nominations and polling shall be held between the last Monday of October and the third Saturday of November. In practice, school boards follow section 85, *Municipal Act*, although it does not legally apply to school districts (section 35 (e), *School Act*) — nominations between 10 a.m. and noon on the last Saturday of October, with polling other than any advanced poll between 8 a.m. and 8 p.m. on the third Saturday of November.

New Timing If Death Of Candidate

Should a candidate die before the poll commences, the returning officer must cancel the election, and the school board shall set the dates for a new election: nominations within 10 days of when the poll was to have taken place, and the new poll 6 days following nominations (section 107, *Municipal Act*).

Ballot Boxes and Papers

Where a school board is responsible for a trustee election, its secretary-treasurer shall procure at the board's expense, and provide for the returning officer, sufficient ballot boxes for the polling (section 113, *Municipal Act*). Similarly, the secretary-treasurer shall procure and provide sufficient ballot papers containing the candidates' full names in alphabetical order and their occupations, unless done by the returning officer (section 114, *Municipal Act*).

Appointment of Returning Officer

A school board which is responsible for a trustee election must appoint the returning officer (section 35 (b) (iii), *School Act*). It must also either appoint the requisite number of deputy returning officers to preside at each polling station, or delegate this task to the returning officer (section 35 (b) (iv), *School Act*). No person must be appointed returning officer or deputy returning

officer, or for any other position concerning the election, if he/she has been or is employed "by another person in or about the election" (section 35 (c), *School Act*). *Lawyers have given their opinion that this includes the secretary-treasurer or any other school board employee.* Should a deputy returning officer die before the poll, or be absent when required, the returning officer shall appoint a successor; should the returning officer die, or suffer from sickness or an accident, his role shall be undertaken by the secretary-treasurer (section 136, *Municipal Act*).

Other Arrangements

Section 35 (b) *School Act* provides, in addition to the specific requirements earlier in this chapter, that the school board "shall otherwise arrange for the holding of an election." This provides the board with the authority to do whatever is reasonably required, in accord with the intent of the *School Act* and the relevant sections of the *Municipal Act*, in order to make the election function as effectively and efficiently as possible.

CHAPTER 6: ROLE OF RETURNING OFFICER

What Has To Be Done By The Returning Officer?

Principal Tasks of Returning Officer

The returning officer plays a key role in trustee elections. His/her appointment is the responsibility of the school board, where the board is responsible for the election (see Chapter 4). The returning officer's duties are myriad, and would require a book of their own to be fully itemized. This chapter provides a review of the principal tasks only:

- appointment of deputy returning officers, if this function is delegated by the school board;
- issuing of the notice of election, and arranging for its publication and posting;
- accepting or rejecting nominations for election;
- proclaiming candidate(s) elected, if acclamation;
- issuing notices of poll, if required;
- supervising the polling and the counting of ballots;
- proclaiming poll results and notifying school board; and
- attending any recount and proclaiming the outcome.

Throughout all of the above the returning officer and deputies are required, and empowered, to maintain peace and good order, while failure to perform any of their functions, or any wilful misfeasance, may lead to them being fined or imprisoned. And just to keep the returning officer and his staff on their toes, penal sums may be awarded against them to any aggrieved person, in addition to any fine or imprisonment.

During the review of duties which follows there is minimal repetition of material in other chapters. Some is believed necesary for convenience, however, to prevent continuous reference to previous or later pages.

Terminology

On terminology: it is generally accepted that the word "election" covers the whole process, whether the trustee(s) are elected by acclamation or by poll.

Appointment of Deputies

The school board has the power to appoint deputy returning officers, or to delegate this task to the returning officer (section 35 (b) (iv), *School Act*). The deputies preside at any polling stations, where they are called "presiding officers." It should be noted by any returning officer delegated this task that section 35 (b), *School Act*, requires that he/she not appoint anyone "for the purposes of an election who has been or is employed by another person in or about the election" — lawyers believe that this includes employees of the school board.

Issuing Notice of Election

The school board determines the times and places for nominations, and polling where required (section 35 (b) (i) (ii), *School Act*). It is the returning officer's task to issue the required notice of election after the dates have been decided (section 92, *Municipal Act*).

The notice must be issued at least 6 days before nomination day, appear once in a newspaper circulating in the school district, and also be posted until nomination day at the school board office, the court house and police station if any, and any other places the school board decides. The notice must be in the form prescribed by section 93, *Municipal Act*, and call on the electors to nominate and elect the number of trustees required, at the time and place specified for nominations. It must also specify the times and places for polling, including any advance polls, should polling be required. The body of the notice contains a standard statement outlining nomination procedures, and advises that the returning officer will receive nomination papers between the date of the notice and noon on the nomination day.

Should there not be a newspaper published in the school district at the time required, the notice should be carried in the B.C. newspaper published the nearest (section 38, *Interpretation Act*).

Accepting or Rejecting Nominations

Details of the nomination form and candidate's declaration appear in sections 94-97 of the *Municipal Act*, and are reviewed in Chapter 8. The returning officer's task is to receive these papers, issuing a receipt if requested, and to accept or reject them. He/she may reject the nomination papers of any candidate whose name does not appear on an electors list in any municipality or regional district in British Columbia, or should the returning officer have reasonable cause to believe that the candidate is not otherwise qualified (sections 98 (1) (2), *Municipal Act*). (Candidates' qualifications are reviewed in Chapter 7). A candidate whose nomination papers are rejected may notify the returning officer that he/she is appealing to the Provincial Court, which may order the returning officer to accept or reject the nomination (section 98 (3) (4), *Municipal Act*). Any such appeal must be made by 5 p.m. on the Wednesday immediately following nomination day, and the court must give its decision within 48 hours.

Procedure at Nominations

The returning officer must be at the place designated in the notice of election at 10 a.m. on nomination day, to read aloud the notice of election and the names of candidates whose nomination papers have been accepted, and of any who are appealing against their rejection (section 99, *Municipal Act*). The returning officer then continues to receive nominations, allowing no speeches nor interruptions, and at noon formally closes nominations and reads aloud the names of all candidates validly nominated, and of any appealing against rejection of their nomination papers (sections 100 and 101, *Municipal Act*). If no further nominations nor notices of appeal have been received by the returning officer in those two hours, the list read at noon will be the same as that read at 10 a.m.

Procedure if Acclamation

If at noon on nomination day there is the same number of validly nominated candidates as there are vacancies on the board to be filled in the election, *and* there are no outstanding appeals to the

Provincial Court, the returning officer proclaims the candidate(s) elected, and reports their name(s) to the secretary-treasurer (section 102, *Municipal Act*). If at noon on nomination day there is an outstanding appeal that the returning officer has been advised of, and which if allowed by the Provincial Court would require that there be a poll, the returning officer must delay any action until the court gives its decision. The court has to give its ruling before 5 p.m. on the Friday immediately following nomination day (section 98 (3) (4), *Municipal Act*).

Procedure if Poll Required

If more candidates are validly nominated than are needed to be elected, including any who successfully appeal to the Provincial Court, the returning officer declares the names of the candidates, publicly announces the times and places for polling, and adjourns the election until polling day. He/she then issues a notice of poll in the form required by section 104, *Municipal Act*, confirming the times and places for polling and listing the candidates' names, addresses and occupations in alphabetical order, as required on the ballot paper. The notice of poll must be posted in the same places as was the notice of election, and the returning officer may decide to publish it in the same newspaper in which the notice of election appeared (section 103, *Municipal Act*). The returning officer must also provide a certified list of candidates to any candidate or candidate's agent who requests it (section 105, *Municipal Act*).

Withdrawal or Death of Candidate

By giving a signed notice to the returning officer, a candidate may withdraw — but only within 24 hours of the closing of nominations. If in consequence no poll is now required, the returning officer shall countermand the notice of poll, openly declare the remaining candidate(s) elected, and notify the secretary-treasurer (section 106, *Municipal Act*). If a candidate dies after a poll is announced but before it commences, the returning officer must countermand the notice of poll and commence a new election. The school board sets the dates and times: nominations within 10 days of when the poll was to have taken place, and the new poll on the 6th day following the nominations. The school board also decides what notices shall be provided that will best inform the electorate. A candidate at the time of the countermand need not file fresh nomination papers (section 107, *Municipal Act*).

Supervising of Polling

The voting and counting activities at the polls are under the control of the presiding officers (deputy returning officers), and the detailed procedures they must follow are reviewed in Chapter 10. The returning officer, however, is responsible for the overall supervision and co-ordination of the procedures, with the statutes specifically listing the following as his/her duties:

Advance poll — the returning officer shall open the polling place, reseal the ballot boxes upon its closing, and shall prevent anyone who has voted there

from voting on polling day (sections 88, 90 (3) and 120, *Municipal Act*).

Agents and scrutineers — the returning officer shall receive their affidavits as required by section 110, *Municipal Act*.

Ballot papers — if the returning officer has been so directed by the school board he shall prepare the required ballot papers (if not, the secretary-treasurer does so). The ballot papers must contain the candidates' names, in alphabetical order, and their occupations. If an election to fill a vacancy on the board takes place at the same time as the annual election, separate ballot papers must be used (section 114, *Municipal Act*).

Voter omitted — if a qualified elector has been omitted from the list of electors and he/she wishes to vote, the returning officer or secretary-treasurer shall receive from the elector an application for registration (section 126, *Municipal Act*).

Deputy voting— the returning officer must give approval before a deputy returning officer or poll clerk may vote at the polling place where the deputy or clerk is working (section 135, *Municipal Act*).

Deputy absent — if a deputy returning officer dies or is otherwise absent from the polling place where required, the returning officer must appoint a replacement (section 136 (1), *Municipal Act*).(If the returning officer dies or is otherwise absent his place is taken by the secretary-treasurer — section 136 (2), *Municipal Act*).

Determining results — the returning officer examines and tallies the ballot accounts prepared by the presiding officers and may, if satisfied and if no candidate or agent requests a further ballot count, proclaim which candidate(s) is elected. Where doubt exists, the returning officer shall count the votes from any polling place, hiring competent persons to assist, but the returning officer shall personally deal with all ballots objected to or rejected (sections 156-160, *Municipal Act*). These sections are extremely detailed and it is essential that they be studied closely by the returning officer — also see Chapter 10.

Casting vote — if there is an equality of votes the returning officer shall determine which candidate is elected by casting the deciding vote (section 161,

Municipal Act). Section 51 (2), *School Act*, states that if the returning officer has already voted he does not commit an offence by voting again.

Retaining documents — the returning officer must retain all documents and ballots for 8 weeks after proclaiming the election result, when they shall be destroyed unless required by the courts (section 163, *Municipal Act*).

Posting of Poll Result and Advising School Board

In addition to proclaiming which candidate(s) is elected by poll, as above, the returning officer issues a statement of the poll result showing the votes cast for each candidate. It must be posted in a conspicuous place in the school board office or other public place (section 162, *Municipal Act*). In addition, the returning officer shall provide the school board, within one month of the proclamation, with a copy of this statement, together with a compilation of the information in the ballot accounts (section 164, *Municipal Act*).

Election Result Publishing

Section 35 (e) (vii), *School Act*, provides that the returning officer shall report to the secretary-treasurer within 5 days of the result of the election being proclaimed the names of the persons elected by acclamation or by poll, while the same information must also be published in *The British Columbia Gazette* within one month of the election result being proclaimed (section 165, *Municipal Act*).

Recounts

The procedures to be followed for any recounts of the votes cast are contained in sections 166-170, *Municipal Act*, and are reviewed in Chapter 11. The returning officer's principal duties are to produce the ballots and ballot accounts, attend the recount, proclaim the result of the recount and, if necessary, amend the statement of the poll result as posted under section 162, *Municipal Act*.

Order During Elections

In order to preserve peace and good order throughout the election period, the returning officer and the deputy returning officers are peace officers, with the same powers to arrest and detain any person who breaks the law or troubles the peace. They also have the same powers as a justice concerning trials and convictions (section 139, *Municipal Act*). Details of these responsibilities and powers are contained in sections 139-147, which should be studied very carefully.

Liability of Returning Officer and Deputies

Indeed, the returning officer and his deputies should study all the relevant sections of the *School* and *Municipal Acts* closely. For if they are found guilty of wilful contravention of their duties, including failure to perform, they may be subject to penal sums of up to $500.00 to be forfeited to the person aggrieved, as well as any other penalty that may be imposed by a court (section 203, *Municipal Act*).

CHAPTER 7: ELIGIBILITY AS A CANDIDATE

Who Is Eligible To Stand For Election As A Trustee?

Basic Eligibility

Basically, the *School Act* provides that persons who appear on a current local voters list in British Columbia are eligible to stand for election as school trustees (section 55 (1), *School Act*). But the *School Act* also provides that certain persons who meet this requirement may still be disqualified from standing for election or serving as trustees (sections 59 and 63, *School Act*). This chapter reviews the practical effects of these statutory provisions.

Election In Any District(s)

The current local voters lists specified in section 55 (1) are those "in the Province" for any municipality, regional district or rural area outside a regional district where the secretary-treasurer prepares the voters list. The phrase "in the Province" means that a person does not have to be on a voter's list in the school district in which he stands for election. For example, someone on the voters list in Victoria may stand for election in Vancouver (although his two nominators must be on the Vancouver voters list), and vice versa. It also means that a person may stand for election as school trustee in two or more school districts at the same time, and if elected serve on two or more school boards. There is, however, a statutory restraint (section 58, *School Act*) on a person standing for election in two different electoral areas in the same school district at the same time, otherwise one person might be elected as two trustees on the school board.

Trustees, Councillors and M.L.A.s

A serving trustee may stand for re-election as many times as he wishes. There is no statutory restraint on a municipal councillor or M.L.A. from standing for election and serving as a school trustee.

Disquals., Exceptions, and Cases

The grounds on which an otherwise eligible person may be disqualified from standing for election and serving as a school trustee appear in section 59, *School Act*. They must be read, however, in conjunction with the "exceptions to disqualifications" contained in section 63, *School Act*. In addition, there is some case law relevant to the interpretation of the two sections. The balance of this chapter reviews, by subject matter for disqualification, the combined effects of the two sections and the case law.

Board Employees

One of the principal disqualifications as a school trustee is to be an employee or salaried officer of the school board (section 59 (a), *School Act*). This means that no teacher, custodian, school bus driver, superintendent, etc., who is employed by the school board may run for election to that board. It does not mean, however, that they are disqualified from running for election and serving as a trustee on another school board. The status of a substitute teacher as an employee of the school board, regardless of the number of days taught by the substitute, was confirmed by Provincial Court Judge F.S. Perry in Mullen v Carpenter, November 24, 1972, in Prince George Provincial Court (unreported).

Ex-employees

It should be noted here that a person who ceases to be an employee or salaried officer of the board prior to the date on his/her nomination papers is not disqualified from standing for election under section 59 (a), but will be disqualified under section 59 (b) if they have earned over $1,000 from the board during that calendar year. For example, a teacher retiring at the end of the school year, June 30, 1986, would have to wait until the Fall of 1987 before becoming eligible to stand for election as a trustee on the school board, assuming that no other disqualification applied to the ex-teacher.

No Payment Over $1,000

Section 59 (b) provides that any person who receives over $1,000 "remuneration" in the current calendar year from the board may not stand for election to that board. Excluded are any trustee indemnities and expenses received by a serving trustee who wishes to stand for re-election. "Remuneration" means a payment for work or services, and consequently section 59 (b) may affect such persons as consultants, lawyers, medical officers, auditors, building contractors, landscapers, etc., as well as ex-employees.

More Exempt Payments

In addition to trustee indemnities and expenses, there are other exemptions to the $1,000 remuneration rule. A person may receive monies without affecting their eligibility as a trustee or candidate:

- where they hold commonly available debentures in the school district (section 63 (g));
- as witness fees or conduct money for attending legal proceedings by or against the school district (section 63 (h));
- as honoraria or expenses from the B.C. School Trustees Association or any of its branches (section 63 (i)).

Contracts

Spouse of Employee

The next ground for disqualification as a candidate for election as school trustee is having a contract or an interest in a contract with the school board. Section 59 (d) states that any person who has "directly or indirectly, by himself or through another person, any contract or interest in a contract with or for the board of the school district" is disqualified. This section's bark, however, is tougher than its bite, as the courts have not interpreted it restrictively. For example, in Korsch v Kruschel, Kelowna Provincial Court, October 29, 1975 (unreported), his honour R.J.S. Moir ruled that the spouse of a teacher with a contract of employment with the board was not disqualified from standing for election to that board under section 59 (d). Judge Moir explained as follows:

> While Mr. Korsch may well have an interest in the welfare of his wife, in her success as a teacher, in her health, in many aspects of her life, he does not have an interest direct or indirect, in her contract (of employment) with the school district. He cannot force the school district to pay his wife's benefits, or any part of them to him, he cannot, lawfully in any event, force his wife to pay the benefits she received or any part of them to him.

The court holds that the interest contemplated by the statute is a legal interest, not one arising out of a relationship unconnected with the activities of the school district or the work performed by the wife.

Employee of Business

Moreover, lawyers believe that an ordinary line employee of an organisation or person having a contract with a school board is not excluded from standing for election as a trustee on that board, although an employee involved in the management or control of that employer's business would be. This opinion is based on the B.C. Court of Appeal's 1979 decision in Boss v Broadmead Farms and Saanich Municipality, (1980) 16 B.C.L.R. 268.

Refraining from Voting

With regard to an employee who is involved in the management or control of the employer's business, the employee is completely disqualified from standing for election or serving as a trustee — there is no general provision in British Columbia legislation for a person with a conflict of interest to serve on the board by refraining from taking part in board decisions affecting that interest, such as that which exists in Ontario. Statutory provisions providing for such avoidance of conflict by school trustees in B.C. are restricted to:

Shareholder Exception

- where the interest arises from being a shareholder in a company with a contract with the board (section 63 (1) (b), *School Act*); and

Small Business Exception

- where the person sells goods to the board worth no more than $500 "in the ordinary course of business" in any fiscal year (section 63 (1) (c), *School Act*).

This last exception is presumably to assist local shopkeepers and suppliers of goods to stand for election and serve as trustees, provided the $500 maximum is not exceeded.

Other Contract Exceptions

Other somewhat technical exceptions exist in B.C. for:

- members of co-operatives which have a contract with the board (section 63 (1) (a), *School Act*);
- for persons acting "as devisee, legatee, executor or administrator, or otherwise involuntarily by operation of law" for not more than 12 months, and who in this capacity have a contract with the board (section 63 (1) (e), *School Act*,); and
- persons having a contract with the board that "has first been approved by the minister (of education) as being necessary in the interests of the school district" (section 63 (1) (d), *School Act*).

Ceasing To Be On Voters List

A further disqualification exists for a person wishing to stand for election as a school trustee. Section 59 (e), *School Act*, provides that a person who ceases to have the qualifications required under section 55 (appears on a local voters list somewhere in B.C.) becomes ineligible. Presumably this refers to the possibility that someone who qualifies under section 55 at the time

of being nominated (otherwise he could not be so nominated), ceases to have that qualification before the election is held. It should also be noted that, once elected, the person does not cease to be a trustee upon no longer appearing on a local voters list, provided that within one month he does so appear once more (section 63 (1) (f), *School Act*).

Omission From Voters List

A person wishing to stand for election as a trustee who has all the qualifications necessary to appear on a local voters list (see chapter 9) but does not so appear, has a problem. He should file an application for registration as a voter immediately, under the provisions of section 126, *Municipal Act*. If the application is filed with the returning officer, he will likely be ruled eligible to file nomination papers, as the clerk of the municipality or regional district incorporates such applications in the register of voters.

More Disquals.

The *School Act* also provides for further disqualifications for persons who wish to stand for election as a school trustee:

- if convicted of bribery, impersonation, treason or any indictable offence, unless and until he is granted a free or unconditional pardon or has undergone the sentence imposed for the offence (section 59 (f), *School Act*)
- is insane — presumably requires certification (section 59 (g), *School Act*)
- is an undischarged bankrupt as defined by the *Bankruptcy Act* (Canada) (section 59 (h), *School Act*).

Financial Disclosure

A candidate for election as school trustee should also note that the *Financial Disclosure Act* of B.C. requires him to file a written disclosure of his "interests" with his nomination papers. This procedure is reviewed in the next chapter.

CHAPTER 8: NOMINATION PROCEDURES

What Is Required When Filing Nomination Papers?

Nomination Period

In order to stand for election as a school trustee, a person must be formally nominated sometime between the notice of election and noon on nomination day (section 94 (2), *Municipal Act*). This chapter reviews the procedures that must be followed in order to be validly nominated, how to appeal if the returning officer rejects the nomination, and what happens in the case of withdrawal or death of an accepted candidate.

Nominators' Qualifications

A candidate for election as trustee must be nominated in writing by two persons whose names appear on a local voters list within the school district, where the election is at large. If the election is for an area representative trustee, the nominators must be on the local voters list within the municipality or rural area in which the candidate wishes to stand (section 35 (e) (iv), *School Act*). A qualified person may nominate more than one candidate (section 95, *Municipal Act*).

Nomination Forms

A candidate must deliver to the returning officer, within the nomination period, a completed nomination paper and an affidavit. The format of the nomination paper is specified in section 96, *Municipal Act*, as amended by section 35 (e) (v), *School Act*. It requires the names, addresses and occupations of the nominators and candidate, and includes a joint declaration that the candidate is eligible for nomination in accordance with the *School Act*. The wording of the candidate's affidavit is specified in section 97, *Municipal Act* — in addition to swearing that he is qualified to be nominated, the candidate must also swear that he has seen the names of his nominators on the relevant voters list.

Financial Disclosure

A candidate must also submit a written disclosure of his financial interests with his nomination forms (section 2 (1), *Financial Disclosure Act*). The returning officer must pass this on "promptly" to the school district secretary-treasurer (section 2 (2), *Financial Disclosure Act*). The written disclosure must include the names of corporations in which the candidate holds shares, the names of businesses in the school district from which he receives any remuneration, the names of any creditors and a description of any land in the school district in which the candidate has an interest (sections 3 and 4, *Financial Disclosure Act*). If elected, updated written disclosures must be filed with the secretary-treasurer by January 15 and July 15 as long as a person remains a trustee, also by the 15th of the month following that in which he ceases to be a trustee, other than through death (section 2 (3) (5), *Financial Disclosure Act*). The secretary-treasurer must make all written disclosures available for inspection upon request during normal business hours (section 6 (1), *Financial Disclosure Act*).

Receipt of Nomination Forms

The returning officer must provide a receipt for the nomination forms if requested, unless he decides to reject the forms. Such rejections must take place if he has reasonable cause to believe that the candidate is not qualified (section 98 (1) (2), *Municipal Act*).

Appeal Against Rejection

If the returning officer rejects his nomination forms, then the candidate may appeal the decision to the Provincial Court, provided that he notifies the returning officer promptly and files his appeal with the court before 5 p.m. on the Wednesday following nomination day. The court must hear the appeal and give its decision within 48 hours, ordering the returning officer to accept or reject the nomination forms (section 98 (3) (4), *Municipal Act*). Two such court decisions are reviewed in chapter 7 — Korsch v Kruschel, and Mullen v Carpenter.

Withdrawal or Death of Candidate

The procedure followed on nomination day, including the announcement of election by acclamation or by poll, is reviewed in chapter 6, Role of the Returning Officer. The polling process, however, may be de-railed by the withdrawal or death of a candidate. A candidate whose nomination forms have been accepted may withdraw only within 24 hours of the close of nominations, by giving his signed withdrawal to the returning officer (section 106, *Municipal Act*). If an accepted candidate dies before polling begins, the returning officer must countermand the poll and commence a new election — a live candidate at the time of the countermand need not file new nomination forms (section 107, *Municipal Act*).

CHAPTER 9: VOTER ELIGIBILITY

Who Is Eligible to Vote in School Trustee Elections?

Chapter's Contents

The types of voters lists for school trustee elections were reviewed in chapter 5: rural areas in regional districts, rural areas not in regional districts, municipalities and the City of Vancouver. This chapter examines the basic qualifications for inclusion on those lists for residents, for corporate and non-resident land owners and tenants, and for native Indians. It also outlines the procedure should a qualified elector be omitted from the voters list.

Common Qualifications

Sections 64 and 65, *School Act*, state that the persons who qualify under the *Municipal Act* or the *Vancouver Charter* for inclusion on the lists of electors in a municipality, regional district or the City of Vancouver, also qualify as voters in school trustee elections. These joint qualifications are spelled out in Part 2 of the *Municipal Act*, with section 64 (1), *School Act*, specifying that "Part 2 of the *Municipal Act* applies" with regard to electors' qualifications in school districts. Those who meet the qualifications are entitled under section 35 (3), *Municipal Act*, to register as an elector, to be included on the voters list and to vote, provided that:

(a) they can satisfy the municipal clerk or other person preparing the list of electors that they are qualified, by providing evidence as requested (section 55 (3), *Municipal Act*); and

(b) they survive any challenge to their inclusion on the list of electors by a qualified elector (sections 57-61, *Municipal Act*).

The basic qualifications are the same for all the electoral registers, and concern age, nationality, residence and any current criminal record.

Age Requirement

To be eligible for registration as an elector under the *Municipal Act* a person must be 19 years of age or over (section 35 (1) (a)). Anyone who will be 19 *before* the date set for a poll is, if otherwise qualified, entitled to be registered and to vote (section 35 (2), *Municipal Act*).

Nationality

Only a Canadian citizen or a British subject is eligible for registration and to vote (section 35 (1) (b), *Municipal Act*). It should be noted that this section may soon be amended to Canadian citizen only — section 88 of Bill 33, Charter of Rights *Amendments Act*, 1985, makes the change but, although Bill 33 has received Royal Assent, section 88 has not yet (June, 1986) come into force. A valid nationality qualification may arise from place of birth or by naturalization, although in the latter case the person preparing the electors list may require evidence of naturalization (sections 50 and 51, *Municipal Act*).

Residence

To be eligible to register and to vote a person must also:

have resided in Canada for the last 12 months;

have resided in British Columbia for the last 6 months; and

have resided in the municipality, etc., in which he seeks registration, for the last 3 months.

(Section 35 (1) (c), *Municipal Act*).

Residence rules are included in section 40, *Municipal Act*. They provide criteria for determining a person's permanent residence, and state that a person does not lose his residence qualification while serving away from home with the Canadian armed forces.

Criminal Record

The last basic qualification for a person to register for and to vote in school board elections is that he not have a current criminal record. It is required that he be free of:

conviction for bribery, personation, treason or an indictable offence, unless he has a free or unconditional pardon, or has undergone the sentence imposed for the offence (section 39, *Municipal Act*);

conviction for the offence of voting more than once for any candidate, until two years after the conviction (section 119 (3), *Municipal Act*); and

"corruptly accepting meat, drink, entertainment or provision" as an inducement when voting in that election (section 198 (2), *Municipal Act*).

Corporate Landholders

A corporation that is not a reporting company under the *Company Act*, and which has more than 50% of its shares owned by one person or family — in effect, any company controlled by a single individual — may register as an elector and vote in a municipality in which it owns land or is a tenant in occupation. The corporation must name an agent who is 19 or more and a Canadian citizen or British subject to vote on its behalf. But if the person controlling the corporation is a resident of the municipality and is qualified to vote there, then the corporation may not be registered as an elector nor vote. Similarly, if the person controls two or more qualifying corporations in another municipality, then only one of them may register and vote (section 38, *Municipal Act*). The cardinal rule here is "one man, one vote, in any one election." The rule applies in school districts containing more than one municipality and in which trustee elections are held at large.

Non-resident Landholders

A person who qualifies for registration as an elector on all counts except for 3 months residence in the municipality, etc. is, if he owns or occupies land in that municipality, etc. still eligible to register and to vote. As with company owners, however, he may only vote once in each election (sections 36 and 37, *Municipal Act*).

Native Indians

Native Indians must, of course, meet the qualifications described above in order to vote in school trustee elections. This section concerns the residency question when otherwise qualified electors live on Indian reserves. In some situations a reserve is included in a municipality's boundary description, in which case there is no problem as a qualified person living on the reserve may register as a voter with the municipality. In other situations, however, the reserve may not be included in a municipality's boundary description. So, provided the reserve is within a regional district, the reserve will be included in the boundary description of an electoral area within the regional district, and a qualified person living on the reserve may register as a voter in that electoral area.

Omissions From Lists

Any qualified person whose name is missing from the relevant list of electors and/or voters list is entitled to apply for and be granted permission to vote in a school trustee election for that area. Following are the statutory authorities:

(a) within a municipality — section 66, *School Act*, and section 126, *Municipal Act*;

(b) within a rural area — sections 66 and 68, *School Act*;

(c) within part only of a rural area — section 35 (e) (vi), *School Act*.

Within a municipality, the procedure is for the elector to file an application form (prescribed in section 45, *Municipal Act*) with the clerk of the council or the returning officer, and if not successfully challenged he may then vote. Within a rural area that is part of a regional district, the secretary of the regional board authorizes the poll officer in writing to permit the omitted elector to vote. In part only of a rural area, or where a rural area is not within a regional district, it is the school district secretary-treasurer who writes the permit for the poll officer.

CHAPTER 10: VOTING AND COUNTING PROCEDURES

What Takes Place At The Polling Station?

Presiding Officers

The voting and counting activities at the polls are under the control of the presiding officers (deputy returning officers), with the returning officer responsible for their supervision and co-ordination. The appointment of the returning officers and deputies is covered in Chapter 6. This chapter reviews the voting and counting procedures at advance polls, mobile polls and standard polling stations, including the roles of candidates' agents and scrutineers.

Agents and Scrutineers

A candidate may appoint in writing:

- a principal agent;
- one assistant agent or scrutineer to attend each polling station while voting and counting takes place; and
- one agent to attend the examination of the ballot paper account by the returning officer.

The agents and scrutineers are prohibited from receiving any payment or consideration for their services, and they must file an affidavit with the returning officer that they are validly appointed, and swear not to divulge any information they may receive during their activities. Any violation of the above may lead to imprisonment, and disqualification of the candidate (sections 109-112, *Municipal Act*).

Advance Polls

Advance polls may be provided by bylaw of the municipal council or of the school board, whichever is responsible for holding the election (see Chapter 4). The bylaw must specify the times and places for the advance polls (section 88, *Municipal Act*). To vote at an advance poll, a qualified elector signs a statement that he expects to be absent on polling day, or will not be able to attend on polling day because of "reasons of conscience" or "through circumstances beyond his control" (section 89, *Municipal Act*). Voting procedures are the same as at a standard polling station (section 159, *Municipal Act*), except that at the completion of the advance poll the ballot boxes are completely sealed by the returning officer until all votes are counted on polling day (section 90, *Municipal Act*). The returning officer is also responsible for precautions to prevent any elector who has voted at an advance poll from voting on polling day (section 120, *Municipal Act*).

Mobile Polls

The municipal council or school board, whichever is responsible for the election, may provide by bylaw for one or more mobile polls. The bylaw must state the hours that each mobile poll will be open at the locations specified in the bylaw.

Ballot Boxes and Papers

The municipal clerk, or school district secretary-treasurer, is responsible for the provision of an adequate number of durable, lockable ballot boxes (section 113, *Municipal Act*), depending on who is responsible for holding the election. Similarly with the provision of ballot papers, except where the school board in-

structs the returning officer to obtain them (section 112 (1), *Municipal Act*). The ballot papers must list all candidates in alphabetical order of surname, and show their occupations: a separate ballot paper is required when an election to fill a vacancy on the board takes place at the same time as an annual election (section 114 (3) (4), *Municipal Act*).

Voting

The presiding officer at each polling station, before voting commences, shows to those persons present that each ballot box is empty. (He may wish them to sign a statement that they saw the box empty before it was sealed). He then seals it so no ballot can be removed without breaking the seal, and keeps the boxes in view (section 117, *Municipal Act*). Voters requesting ballots must first sign the poll book, showing address and occupation, then mark their ballots with a cross in a screened booth, fold the ballot and, after showing it folded to the presiding officer or poll clerk, insert it into the ballot box (sections 128, 129, *Municipal Act*). Provision is made in sections 130-134, *Municipal Act*, for a person who cannot read, is infirm or otherwise unable to mark his ballot, or who inadvertently spoils his ballot paper, to cast his ballot.

Checking Voters

Any person included on the latest, certified list of electors may vote. The presiding officer, a candidate, his agent or a qualified voter may challenge a voter's qualifications. In order to vote, the person challenged must take a formal oath specified in section 122, *Municipal Act*, and the presiding officer shall note "sworn" on the list of electors, and the words "objected to" if this was done by a candidate or agent (sections 121-124, *Municipal Act*).

Voter Omitted

If a qualified elector is omitted from the voters list, or does not appear on the latest, certified list of electors, he may still vote with the written approval of the municipal clerk or school district secretary-treasurer (sections 125 and 126, *Municipal Act*).

Counting The Votes

Section 28, *School Act*, requires that all counting take place at the same time, where the election is at large. At the close of each poll the presiding officer shall completely seal the ballot boxes; he then opens them as required to count the ballots in the presence of his staff and any candidates and agents (sections 148, 149 and 151, *Municipal Act*). The presiding officer's staff may consist of poll clerks and "competent persons to assist him in counting the votes", although any rejected or challenged ballots must be dealt with by the presiding officer personally (section 150 (3), *Municipal Act*). The grounds for rejection of ballots by the presiding officer are specified in section 152, *Municipal Act*. He then declares the result of the vote at his polling station, puts the ballots into the required packets and prepares a ballot account on the numbers of ballots cast for each candidate, spoiled ballots, etc., seals everything in the ballot boxes and sends them to the returning officer (sections 153-155, *Municipal Act*). The returning officer tallies the ballot accounts and, if no doubt exists, proclaims the result; if there are doubts or objections the returning officer may count the ballots and, if necessary, cast a deciding vote (sections 156-162, *Municipal Act*).

CHAPTER 11: CALLS FOR A RECOUNT

How to Apply for a Judicial Recount of Votes Cast

Recount v Appeal

Sometimes the declared result of a poll is so close that a recount of the ballots is justified. Such a recount is conducted under the supervision of the courts and is known as a "judicial recount". It should be clearly distinguished from appeals against the election of a candidate on the grounds that he is not qualified to serve as a school trustee, or that the election procedures were irregular — see Chapter 12.

Following is the "judicial recount" process.

Application

Application for a recount may made to the County Court anytime within 5 days of proclamation of the election result. The court may order a recount where a credible witness swears on affidavit that a miscount took place or that a ballot was unlawfully accepted or rejected, provided that the successful candidate's majority was not over 49 votes. The recount must take place within 8 days of the court order, and notice must be provided to all candidates, agents and the returning officer. The court may have a clerk of the court attend the recount, and may appoint persons to assist the counting (section 166, *Municipal Act*).

Recount of Ballots

The returning officer must produce the ballots and ballot accounts at the time and place appointed for the recount, although they remain in his custody (sections 169 and 170, *Municipal Act*). The recount then takes place under the court's supervision, following the same procedures as for the first count, with the candidates and agents present if they wish. Upon completion the court seals the ballots in separate packets, and certifies the result to the returning officer. The returning officer, who has a determining vote if necessary, then proclaims the result of the recount (section 170, *Municipal Act*).

CHAPTER 12: APPEALS AGAINST AN ELECTION

How To Appeal Against A Possibly Invalid Election

Part 3 Applies

Section 71, *School Act*, states that formal questioning of the validity of the election of a school trustee must be conducted in accordance with Part 3 of the *Municipal Act*. This method applies where it is believed that the person elected is not qualified to serve as a trustee or there was an irregularity in the election procedures. It does not apply when calling for a judicial recount, see Chapter 11. The relevant sections of Part 3 are 171-181, *Municipal Act*, and these are reviewed below.

Petition to Court

The review of the election of a school trustee, where his qualifications or the election procedure are in doubt, is made by the B.C. Supreme or County Court. Any candidate at the disputed election, or 4 or more qualified electors, may present a petition and affidavit to the court, requesting that the election be declared invalid for the reasons stated in the petition. The petition and affidavit must be filed within 10 days of when the election result was proclaimed, together with $100.00 deposit for costs (sections 171-173 (2), *Municipal Act*).

Court Hearing

There are no formal pleadings before the court, merely a summary hearing and decision that is final. The court decides whether oral or written testimony is required, and who shall submit it — witnesses may be subpoenaed. The decision may:

- confirm the election;
- declare the election invalid;
- set aside the election of a trustee and declare that another person was duly elected; or
- set aside the election of a trustee and declare that no other person was duly elected in his stead.

The court then issues the relevant order, if necessary removing the elected person from office and declaring that another person, upon swearing in within 30 days of the court order, takes his place on the school board (sections 173 (3)-175 and 177, *Municipal Act*).

Election Procedural Problems

The court will not overturn an election solely because of a procedural irregularity, or because some section of the *School* or *Municipal Act* was not followed, provided that the court believes "that the election was conducted in good faith and in accordance with the principles laid down by this Act, and that the irregularity or failure to comply did not materially affect the result of the election" (section 176, *Municipal Act*). For example, failure to advertize in a newspaper a school board election, as required by the *Municipal Act* (see Chapter 6), could result in the election being declared invalid — it would depend on whether the court found that the failure was deliberate, and it resulted in many qualified electors being unaware of the election.

Costs and Payments

The awarding of costs of the petition are at the court's discretion, except that the costs of a successful petitioner must be paid immediately by the school board, which may then recover them as the court directs. The court may order an invalidly elected person to pay up to $5,000.00 to the school board (sections 178 and 179, *Municipal Act*).

Renouncing Office

There is one major variation from the procedures above that is possible — after a petition has been filed, the person declared elected may file with the school district secretary-treasurer a disclaimer which renounces all claim to office. The court may then permit the petition to be withdrawn, except where bribery or corruption have been alleged. (Section 180, *Municipal Act*).

Interim Rights

A person proclaimed elected does not lose his rights of office until the court declares he was invalidly elected, or he files a disclaimer renouncing all claim to office (section 181, *Municipal Act*).

Sitting Trustee

It is interesting to note, although not directly relevant to this book, that the procedures described above also apply to the removal of a trustee who, it is believed, has ceased to have the required qualifications. The major variation is that, in addition to a petition by a former candidate or 4 electors, section 181 (c), *Municipal Act*, provides for a school board to pass a resolution declaring a trustee's office vacant for lack of qualification. The subject trustee may appeal such a resolution to the courts, although pending the court's decision he may not vote as a board member (section 182, *Municipal Act*).

CHAPTER 13: TAKING OFFICE

Declaration and Oath Essential

A person who has been elected as school trustee, other than to fill a vacancy on the board, takes office on December 1 for two years (section 24 (4), *School Act*). Nevertheless, he may not take his seat on the board or act as trustee until he has made the required declaration and oath of allegiance (sections 76 and 77, *School Act*).

Declaration

The declaration must be made before a judge, justice, clerk of a municipality or secretary-treasurer of a board. The judge, etc. should provide a certificate that the declaration has been made, which the trustee-elect forwards to his board's secretary-treasurer. The declaration affirms that the trustee-elect is qualified to serve, has not had nor will he enter any illegal conflict of interest, has not employed bribery, corruption or intimidation to get elected, and that he will perform his duties in accordance with the *School Act*. The exact wording is contained in section 74, *School Act*.

Oath of Allegiance

The oath of allegiance is to the Queen and her successors, and it is forwarded to the Ministry of Education (Field Services Division). If no qualified person (see below) is readily available to administer the oath of allegiance, or if the trustee-elect objects to taking an oath, an affirmation of allegiance may be made before two witnesses and forwarded to the Ministry. The form of affirmation is in section 75, *School Act*.

Persons qualified to take oaths are lawyers and notaries public — section 13 (1) (d), *Notaries Act* — but it should be noted that section 92 (2), *School Act*, empowers school district secretary-treasurers to "administer oaths and take and receive, in the school district, affidavits, declarations and affirmations required to be taken by or under this Act."

Failure To Declare

A trustee-elect has up to 70 days after proclamation of the election results in which to make the declaration and take the oath — failing which his election is deemed null and void and his office declared vacant (section 186 (1), *Municipal Act*, and section 35 (e) (viii), *School Act*).

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